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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,052	10/25/2000	Ludwig Busam	CM1778Q	9275

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/674,052

Applicant(s)

BUSAM ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed June 26, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the applicant has amended claim 1 to recite that the fibers of the first and second material are substantially unbroken.

Applicant is required to cancel the new matter in the reply to this Office Action.

The examiner notes that the amendment filed June 26, 2003 presents originally filed claims 3 – 12 as the claims that are currently pending in the case. It is unclear whether or not the applicant intended to present the claims as amended by the preliminary amendment filed October 5, 2000 or if the applicant intended to amend the claims to be consistent with what was originally filed. Clarification is required.

For purposes of examination, the examiner presumes that the applicant intended to present the claims as amended by the preliminary amendment filed October 5, 2003.

### ***Claim Objections***

Claim 3 is objected to because of the following informalities: the claim alternatively depends on a canceled claim rendering the scope of this claim unclear. The examiner has applied prior art to this claim as if the claim solely depended on

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claim 1. Appropriate correction is required.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to support substantially unbroken fibers in the first and second material.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilman et al. (US 5,437,653).

With respect to claims 1, 6 – 9 and 11 Gilman et al. (hereinafter "Gilman") discloses a laminate web comprising a liquid pervious first material (12) and a liquid pervious second material attached to the first material (20), characterized by the first and second material having the claimed effective open area (col. 3, lines 31 – 34) and a plurality of apertures with the claimed effective size (col. 3, lines 58 – 63), said apertures of the second material being aligned with the apertures of the first material (col. 5, lines 9 – 11) wherein a plurality of fibers of the first material and a plurality of

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fibers of the second material are substantially unbroken (prior to the aperturing process) wherein the first material and the second material are simultaneously bonded together and apertured bonded together as set forth in col. 5, lines 26 – 27 and 30 – 31.

The examiner contends that the heated male and female die will allow for bonding and the individual dies will provide the simultaneous aperture bonding.

The difference between Gilman and claim 1 is the provision that the second material has more hydrophilicity than the first material.

Gilman discloses that the first material provides a dry surface against the skin of the wearer and in col. 3, lines 3 – 14, Gilman discloses suitable materials for the first material. The disclosed materials (polymers) are hydrophobic. Gilman calls the second material an absorbent layer. Gilman does not disclose this layer to be hydrophilic.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the second material hydrophilic in order to enhance the absorbency of that layer because it is after all an absorbent layer, and an absorbent layer is intended to absorb fluids. If the second material is hydrophilic, it will have more hydrophilicity than the first material because the first material is hydrophobic.

With reference to claims 3 and 4, the first and second materials are nonwoven. They have no weave.

With respect to claim 12, the backsheet is 16 and the absorbent is 22.

As to claims 1, 5 and 10, (a slightly different interpretation from that set forth above for claims 1, 6 – 9 and 11), Gilman discloses a laminated web that has a first material (20) and a second material (12). The claimed open area is disclosed in col. 3,

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lines 31 – 34, and the recited aperture sizes are disclosed in col. 3, lines 58 – 63. The apertures of the first and second materials are aligned as claimed. The second material has a greater width than the first material as claimed and would result in the claimed bonded area.

### ***Response to Arguments***

Applicant's arguments filed June 26, 2003 have been fully considered but they are not persuasive.

Initially, the examiner notes that contrary to the applicant's assertion, claims 1 – 12 are no longer pending. Claim 2 has been canceled by the amendment of June 26, 2003 and claims 1 and 3 – 12 are now pending in the instant application.

With respect to the applicant's argument that allegedly differentiates the claimed invention from the prior art, the examiner contends that these differences are not persuasive and have been addressed in the rejection of claim 1.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., non-entangled fibers) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

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See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Michele Kidwell  
December 20, 2003

  
**GLENN K. DAWSON**  
**PRIMARY EXAMINER**